

REPRESENTATIVE FOR PETITIONER:

Matt Westhuis, Chief Financial Officer of Faith Properties

REPRESENTATIVES FOR RESPONDENT:

Chris Coakes, Appeals Coordinator

Eric Grossman, Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Faith Community Development Corp.	)	Petition No.:	79-004-18-2-8-00585-18
	)		
Petitioner,	)		
	)		
v.	)	Parcel No.:	79-07-20-254-003.000-004
	)		
Tippecanoe County Assessor,	)	County:	Tippecanoe
	)		
Respondent.	)	Assessment Year:	2018

**September 13, 2019**

**Final Determination**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**Introduction**

1. Faith Community Development Corp. sought an exemption for a vacant parcel on which it originally intended to develop a home for a low-income family but later decided to use as a community garden. The legislature has identified narrow circumstances under which vacant land may qualify for exemption. Faith Community’s use of its parcel, while arguably charitable or religious, does not meet those statutory requirements. We therefore deny Faith Community’s exemption claim.

## **Procedural History**

2. On April 4, 2017, Faith Community filed a Form 136 application seeking an exemption for its vacant parcel of land. The Tippecanoe County Property Tax Assessment Board of Appeals (“PTABOA”) found that the application was untimely for 2017 but considered it for 2018.
  
3. In its application, Faith Community certified that it had demolished a rundown home on the property and that it intended to develop the property with a new single-family residence for a “lower income family.” On April 4, 2018, the PTABOA issued a Form 120 denying Faith Community’s application and determining the property to be 100% taxable, explaining that the statutory exemption for property acquired to build, renovate, or improve a single-family home to be sold or given away in a charitable manner expired on January 2, 2017.
  
4. Faith Community responded by timely filing a Form 132 petition with us. On April 17, 2019, our designated administrative law judge, Jeremy Owens (“ALJ”), held a hearing on Faith Community’s petition. Neither he nor the Board inspected the property. Matt Westhuis, the chief financial officer for Faith Ministries,<sup>1</sup> and Chris Coakes, the Assessor’s appeals coordinator, testified under oath.
  
5. The parties offered the following exhibits without objection:

Petitioner’s Exhibit 1:	IRS determination letter for Faith Community Development Corporation
Petitioner’s Exhibit 2:	Pages 1-2 of Faith Community Development Corporation’s Bylaws
Petitioner’s Exhibit 3:	Description of the subject property’s intended use
Petitioner’s Exhibit 4:	Photographs of the garden site
Respondent’s Exhibit 1:	Assessor’s narrative
Respondent’s Exhibit 2:	Subject property record card
Respondent’s Exhibit 3:	Form 136 application

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<sup>1</sup> Westhuis testified that Faith Community Development Corporation is part of Faith Ministries, although he did not offer any details about the two organizations’ structures.

Respondent's Exhibit 4: Form 132 petition  
Respondent's Exhibit 5: Copy of Ind. Code § 6-1.1-10 (2016)

6. The record also includes the following: (1) all petitions, motions, or other documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) a digital recording of the hearing.

### **Findings of Fact**

7. Faith Community is a nonprofit corporation that is exempt from income taxation under section 501(c)(3) of the Internal Revenue Code. It was organized, among other things, for purposes of owning, providing, and conveying quality housing for low- and moderate-income families and for carrying out supportive projects to stabilize and enhance low- to moderate-income neighborhoods. *Westhuis testimony; Pet'r Ex. 1-2.*
8. The city gave Faith Community the property, which is located at 1116 N. 6<sup>th</sup> Street in Lafayette. Faith Community originally planned to rehabilitate the existing house for use by a lower-income resident. It later changed its plans and demolished the house. On its exemption application, Faith Community indicated that it intended eventually to develop the property with a new single-family home for a lower-income family. *Westhuis testimony; Resp't Ex. 3.*
9. That plan changed. Faith Community decided to use the parcel as a community garden so people from the neighborhood could form relationships and build their community. The parcel was first used as a garden in the spring or summer of 2018. Before that, it was used as a green space with a picnic table on it. There were no buildings on the parcel. *Westhuis testimony; Coakes testimony; Pet'r Exs. 3-4; Resp't Exs. 1, 3.*

## Conclusions of Law and Discussion

10. The legislature has exercised its constitutional authority to exempt certain types of property from taxation. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). A taxpayer bears the burden of proving its property qualifies for an exemption. *Id.* Every exemption appeal “stand[s] on its own facts,” and it is the taxpayer’s duty to walk us through the analysis. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cnty. Ass’r*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009). Because exemptions relieve properties from bearing their share of the cost of government services, they are strictly construed against taxpayers and in favor of the State. *Indianapolis Osteopathic Hosp.*, 818 N.E.2d at 1014.
11. Faith Community claims an exemption under Indiana Code § 6-1.1-10-16. Subsection (a) of that statute provides an exemption for all or part of a building that is owned, and exclusively or predominantly used or occupied for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10- 36.3(c); *Jamestown Homes* 914 N.E.2d at 15. The exemption extends to land on which an exempt building is situated. It also extends to land on which a parking lot or other structure serving an exempt building is located. I.C. § 6-1.1-10-16(c)(1)-(2).
12. After the original house was demolished, the subject property did not have a building on it. Nor did it have a parking lot or other improvement serving an exempt building. Although Chapter 16 contains three subsections that exempt vacant land in limited circumstances, none of those subsections applies here. Subsection (c) exempts certain land owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics. *See* I.C. § 6-1.1-10-16(c)(3). But Faith Community’s by-laws show that it was not established for those purposes.
13. The other two subsections contemplate vacant land being acquired for purposes of building improvements. Subsection (d) exempts land acquired to erect a building that will be owned, occupied, and used for the exempt purposes described in subsection (a),

provided the owner shows substantial progress toward that end within four years. I.C. § 6-1.1-10-16(d). Similarly, subsection (i) provides:

A tract of land or a tract of land plus all or part of a structure on the land is exempt from property taxation if:

(1) the tract is acquired for the purpose of erecting, renovating, or improving a single family residential structure that is to be given away or sold:

(A) in a charitable manner;

(B) by a nonprofit organization; and

(C) to low income individuals who will:

(i) use the land as a family residence; and

(ii) not have an exemption for the land under this section;

(2) the tract does not exceed three (3) acres; and

(3) the tract of land or the tract of land plus all or part of a structure on the land is not used for profit while exempt under this section.<sup>2</sup>

I.C. § 6-1.1-10-16(i).<sup>3</sup>

14. While Faith Community originally planned to develop the parcel with a single-family home to be used by a low-income family, it had abandoned that plan by the relevant assessment date. Even if Faith Community had not abandoned its original plan, that plan would not necessarily have qualified the parcel for exemption under subsection (d) or (i). The mere fact that a low-income family will live in a building is not enough to show that the building is owned, and predominantly occupied or used for charitable purposes. *See Housing P'ships v. Owens*, 10 N.E.3d 1057, 1059 (Ind. Tax Ct. 2014), *reh'g den.* 17 N.E.3d 403 (explaining that providing low-income housing is not per se a charitable purpose). Similarly, to qualify under subsection (i), the owner must intend to give away or sell the planned residence in a charitable manner; plans to lease to a low-income

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<sup>2</sup>If the nonprofit entity either (1) fails to transfer the property within eight years after the date for which it first receives the exemption or (2) transfers it to a non-low-income person or to a person who does not use it as a residence for at least one year, the owner must pay the taxes that would have been due for each year had the exemption not been granted, plus interest. I.C. § 6-1.1-10-16(l)-(m).

<sup>3</sup>The Assessor, and the PTABOA in its Form 120 determination, both point to language from a 2016 amendment to subsection (j). The amendment provided that an exemption under subsection (i) terminated on the earlier of (1) the date the nonprofit organization conveyed the property, or (2) January 2, 2017. 2016 Ind. Acts. 181 § 2. In its most recent session, however, the legislature again amended subsection (j) to eliminate any reference to the exemption terminating on January 2, 2107. 2019 Ind. Acts 85 § 2. The 2019 amendment applied retroactively to January 1, 2018. *Id.*

family do not suffice. Faith Community offered nothing to show whether it had intended to donate, sell, or lease the planned home.

15. We commend Faith Community for using the vacant parcel to further its benevolent mission. But Faith Community has not shown that it meets the statutory requirements for exemption.

### **Conclusion**

16. Faith Community failed to prove that its property was entitled to exemption. We therefore find that the property was 100% taxable for 2018.

We enter this final determination on the date first written above

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>